

# Recent Developments in the Australian Mining Sector

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There has been positive growth in the Australian mining sector and many recent developments since our last mining update. A summary of the key national developments follows (other than those associated with COVID-19).

## Commonwealth

### Change of Minister

Queensland Member of Parliament, Keith Pitt has succeeded Matthew Canavan as the Minister for Resources, Water and Northern Australia. It is noteworthy that the newly appointed Minister has previously been a vocal supporter of coal and nuclear energy.

### Near Record-High Exploration Spend

Total mineral exploration expenditure in Australia increased by 5.2% to \$629.6 million for the June quarter with WA underpinning the growth. Western Australia undertook \$184.3 million in exploration expenditure which had increased by 6.2%. Base metals and gold, were responsible for the largest increase in exploration expenditure equating to a \$60.6 million rise (47.3%). Mineral exploration expenditure rose in every single state and territory. Western Australia is named the world's most appealing jurisdiction for mining and exploration investment, according to the 2019 Fraser Institute's Annual Survey. The results are based on evaluations of how mineral endowments and public policy factors, like tax and regulatory certainty, affect mineral exploration investment. Western Australia's achievement is accompanied by South Australia's jump to become the sixth most attractive jurisdiction in the world for mining investment, a significant improvement from 24<sup>th</sup> place in 2018.

Greenfield mineral exploration expenditure continued another quarter of growth in all states except Victoria. With Australia in need of greater greenfields mineral exploration, the significant growth in greenfields mineral exploration expenditure across the country reflects the returning strength of the exploration sector. In brownfields exploration, mineral exploration expenditure grew in Western Australia by \$35 million, Queensland by \$19.9 million and Tasmania by \$1.6 million. Expenditure remained the same in New South Wales and decreased for South Australia and the Northern Territory. Despite it being a challenging environment for mineral exploration companies, the statistics were now supporting better growth in the industry.

The recently announced Productivity Commission inquiry into resources sector regulation would be a welcome move to ensure state and federal governments have policy settings that continue to support mining and even greater investment in exploration to develop Australia's next wave of mines.

## Native Title Reform

On 17 October the Hon Christian Porter MP introduced the *Native Title Legislation Amendment Bill 2019* (Cth) ("**Bill**") to the House of Representatives. The Bill proposes to amend the *Native Title Act 1993* (Cth) and *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The Bill has been referred to the Senate Legal and Constitutional Affairs Legislation Committee, which will submit a report with recommendations to Parliament by 28 February 2020.

The key reforms proposed by the Bill include the validation of existing s 31 Agreements (agreements primarily relating to the grant of mining and exploration rights over land which may be subject to native title and compulsory acquisition of native title rights). This aims to resolve uncertainty surrounding the decision in *McGlade v Native Title Registrar & Ors* [2017] FCAFC 10. Details of s 31 Agreements will now be maintained on a register by the Native Title Tribunal Registrar. The Bill also removes native title parties' effective right of veto in respect of infrastructure procedure objections by providing that objections must be heard within eight months- including objections lodged and not withdrawn or heard prior to the reform becoming law. Registered native title applicants will be able to make decisions by majority by default subject to native title groups placing conditions on the applicant's authority. The Bill empowers native title groups to make changes to the composition of the registered native title applicant including in circumstance where an individual is unable to act due to death or incapacity. Any conditions on decision-making power of the applicants will be recorded on the National Native Title Tribunal Register. It will also allow previous extinguishment of native title over national and state parks to be disregarded where parties agree. The Bill will permit minor amendments to be made to registered indigenous land use agreements without re-authorisation. Additionally, it provides for new powers and additional regulations for registered native title bodies corporate and prescribed bodies corporate.

Importantly, the Bill does not include amendments which address the potential invalidity of certain mining leases in Western Australia arising from the High Court decision of *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30.

## Australia's National Hydrogen Strategy

On 22 November 2019, the Council of Australian Governments ("**COAG**") Energy Council agreed to the adoption of Australia's National Hydrogen Strategy ("**Strategy**"). The Strategy aims to establish Australia as a major global player in 'hydrogen' by 2030. The Strategy looks at our hydrogen potential and how Australia can make the most of this opportunity. The Strategy will follow an adaptive approach over a 10 year-period, allowing Australia to be ready to move quickly to scale up as signs of large-scale markets emerge. The approach will focus on actions that remove market barriers, efficiently build supply and demand and accelerate our global cost-competitiveness.

A key element of the approach will be to create 'hydrogen hubs'- which are effectively clusters of large-scale hydrogen demand. These may be at ports, in cities or in regional or remote areas, and will provide the industry with its springboard to scale. It is anticipated that these hubs will make the development of infrastructure more cost-effective, promote efficiencies from economies of scale, foster innovation and promote synergies from sector coupling. These hubs will be complemented and enhanced by other early steps to use hydrogen in transport, industry and gas distribution networks, and integrate hydrogen technologies into our electricity systems in a way that enhances reliability.

To enable industry growth, Government has said it will set clear regulatory frameworks and ensure development have a positive influence on energy prices and energy security. The Government has also said it will work with other countries and engage in bilateral technical collaborations important to support future research, development and deployment and cooperation on pilot projects. Australia has already signed a joint statement on cooperation with Japan in January 2020 outlining a shared commitment to develop its domestic hydrogen industry.

There are three components to the Strategy's vision. The first component is that the industry is clean, innovative, safe and competitive. The second component of the vision is an industry that benefits all Australians. The third component of the vision is to be a major global player by 2030. The Strategy includes a set of nationally coordinated actions involving governments, industry and the community. The fifty seven identified joint actions are just the first steps to achieving its vision. These actions centre on natural coordination, developing production capacity supported by local demand as well as responsive regulation and international engagement. Actions are also themed on innovation and research and development, skills and workforce and community confidence.

Australia has the resources and experience to take advantage of increasing global momentum for clean hydrogen and deploying hydrogen as a utility-scale source of energy.

#### **World's First Public Global Database of Mine Tailings Dams**

The world's first publicly accessible global database of mine tailings storage facilities recently launched in January 2020. The database, the Global Tailings Portal, was built by Norway-based environmental organisation, GRID-Arendal as part of the Investor Mining and Tailings Safety Initiative. The initiative is led by the Church of England Pensions Board and the Swedish National Pension Funds' Council on Ethics, with support from the UN Environment Programme.

The portal details the location and quantity of the global mining industry's liquid and solid waste (tailings). The waste is typically stored in tailings dams which have periodically failed resulting in fatalities as well as severe consequences for communities, wildlife and ecosystems. The database contains information on more than 1,700 tailings dams located around the world maintained by 726 of the world's largest mining companies who were asked to disclose details about their tailings dams. Notably, companies that have disclosed tailings dams in Australia, as part of their sole operations or in partnership, include- Alcoa, AngloGold Ashanti, BHP Group, Fortescue Metals Group, Rio Tinto, South 32, Mineral Resources and Regis Resources.

The database is said to bring a new level of transparency to the mining industry, which will benefit regulators, institutional investors, scientific researchers, local communities and the industry itself.

#### **ASIC Report on Mining and Exploration Initial Public Offers**

On 5 December 2019, ASIC released *Report 641: An inside look at mining and exploration initial public offers (IPOs) ("Report")* which focusses on the micro-cap mining industry. The Report is a result of an ASIC review which found that companies, directors and lead managers of mining and exploration companies need to implement better practices throughout the IPO process. ASIC's report found that mining and exploration companies represented over 25% of all ASX-listed entities with a combined market capitalisation of over

\$300 billion on 1 August 2019. ASIC undertook a detailed review of a sample of mining IPOs raising less than \$20 million over the period between 1 October 2016 and 30 September 2018.

In the Report, ASIC presented a list of ‘best practice recommendations’ to assist companies, directors, lead managers and investors to reduce the risk of conflicts of interest, misconduct or regulatory harm relating to IPOs in the mining and exploration industry.

These recommendations include that directors and companies should implement robust conflict management processes and procedures. Lead manager and corporate mandates should clearly identify obligations and responsibilities, disclose any actual or potential conflicts of interest and clearly set out total remuneration. Directors should understand the rationale behind the pricing, quantum and allocation of seed funding as well as its disclosure requirements in the prospectus. Clear disclosure should be made for any pre-IPO capital issued with an incentive, including any preferential allocation of pre-IPO capital or significant discounts between its pricing and IPO offered to directors, lead managers or other promoters.

Directors and lead managers should be aware of the disclosure standards for public promotional materials and obligations when promoting trading on secondary markets rather than promoting the IPO to prospective investors. ASIC advises that investor presentations and term sheets should not be used to make statements that could not be made in a prospectus.

ASIC’s Report raised how actual expenditure greatly differed from the prospectus use of funds disclosure and recommended that companies, such as micro-cap mining companies, should be more specific on how IPO proceeds are used and ensure that underlying expenditure plans support this disclosure.

ASIC will continue to monitor lead manager and company conduct in connection with mining transactions. ASIC expects that lead managers and companies will review and implement the better practice recommendations contained in the Report, with an aim to facilitating improved transparency, accountability, disclosure and independence throughout the IPO process.

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